

11 FEB 2009

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Legal Assistance Profile

- War Department Circular No. 74 on
16 MAR 43

The War Department and the American Bar Association have agreed to sponsor jointly the following plan to make adequate legal advice and assistance available throughout the Military Establishment to military personnel in the conduct of their personal affairs.

- Congress writes 10 USC 1044
- AR 27-3 Army Legal Assistance
- Scope of our practice

Estate Planning Essentials

- Goals
- Methods of transferring property
- Trusts
- Tax considerations
- Probate / administration

Estate Planning Goals

- Transfer property to beneficiaries
- Minimize taxes
- Reduce burden of administration
- Plan for incapacity

Methods of transferring property

- Lifetime Gifts
- Joint ownership with right of survivorship
- Payment or transfer on death accounts
- Life Insurance
- Wills
- Living Trusts

Gifts made during lifetime

- Annual gift tax exclusion for gifts to any one person valued at \$12,000 or less
- Can be effective strategy to gradually reduce value of estate for tax purposes
- Avoids probate
- Caution must be exercised for Medicaid spend-down planning

Joint Ownership

- Title passes automatically to the surviving joint owner
- Married couples usually own bank accounts and residential real estate in this manner (tenants by the entirety)

Insurance

- Often the most valuable asset in estate
- Contractual in nature
- Pays to beneficiaries named on policy
- Normally not distributed by will

SGLI Issues

- Currently \$400,000
- No restrictions as to beneficiaries
- Treatment of minors as beneficiaries
 - Proceeds paid to court-appointed guardian
 - UTMA (statutory trust, only up to age 21)
 - Testamentary Trust
- See sample SGLV 8286 for language

Living Trusts

- A revocable trust created during the grantor's life by a lifetime transfer of property into a trust
- The grantor, and sometimes the grantor's spouse also, is the income beneficiary during his or her lifetime
- Avoids probate and plans for the eventual incapacity of the grantor
- Upon the grantor's death, the trust becomes irrevocable, and normally pays to remaindermen
- Problems of funding

Wills

- Controls separately owned property
- Testamentary trusts !!!!
- Name guardian for minor children
- Name executor to administer your estate
- Tax planning for those with significant assets

Testamentary Trusts

- Set up during probate
- Useful in providing for blended families
- Exceptional device for minors
 - Selection of trustees
 - Set terms and conditions
 - Set age of distribution (remember RAP?)
- Can save family substantial taxes

Estate Tax Rates

Year	Exemption Amt	Highest tax rate:
------	---------------	-------------------

- | | | |
|---------------------------------------|--------------|------------------|
| ● 2009 | \$3.5million | 45% |
| ● 2010 | N/A | (taxes repealed) |
| ● 2011 | \$1 million | 55% |
| ● Law Sunsets; 1997 Act again applies | | |

Credit Shelter Trusts

\$5M

H W

\$3.5m

\$3.5m

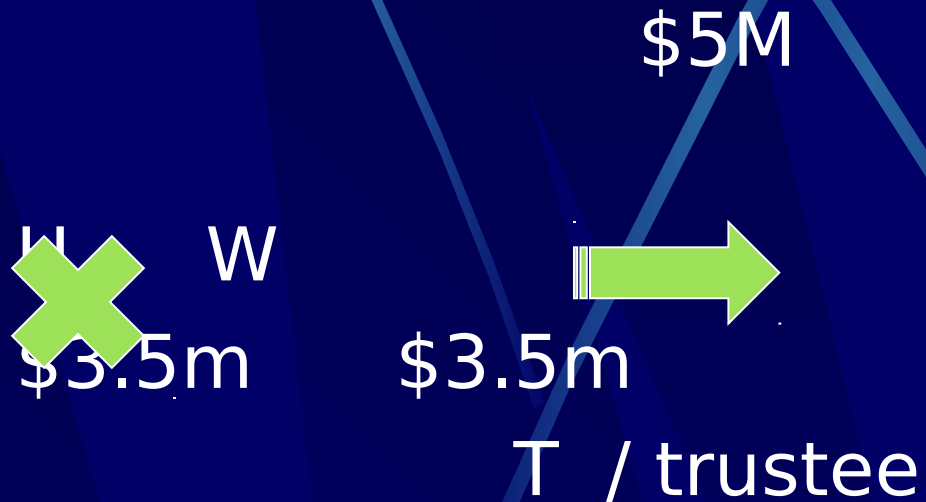
T / trustee

K1

K2

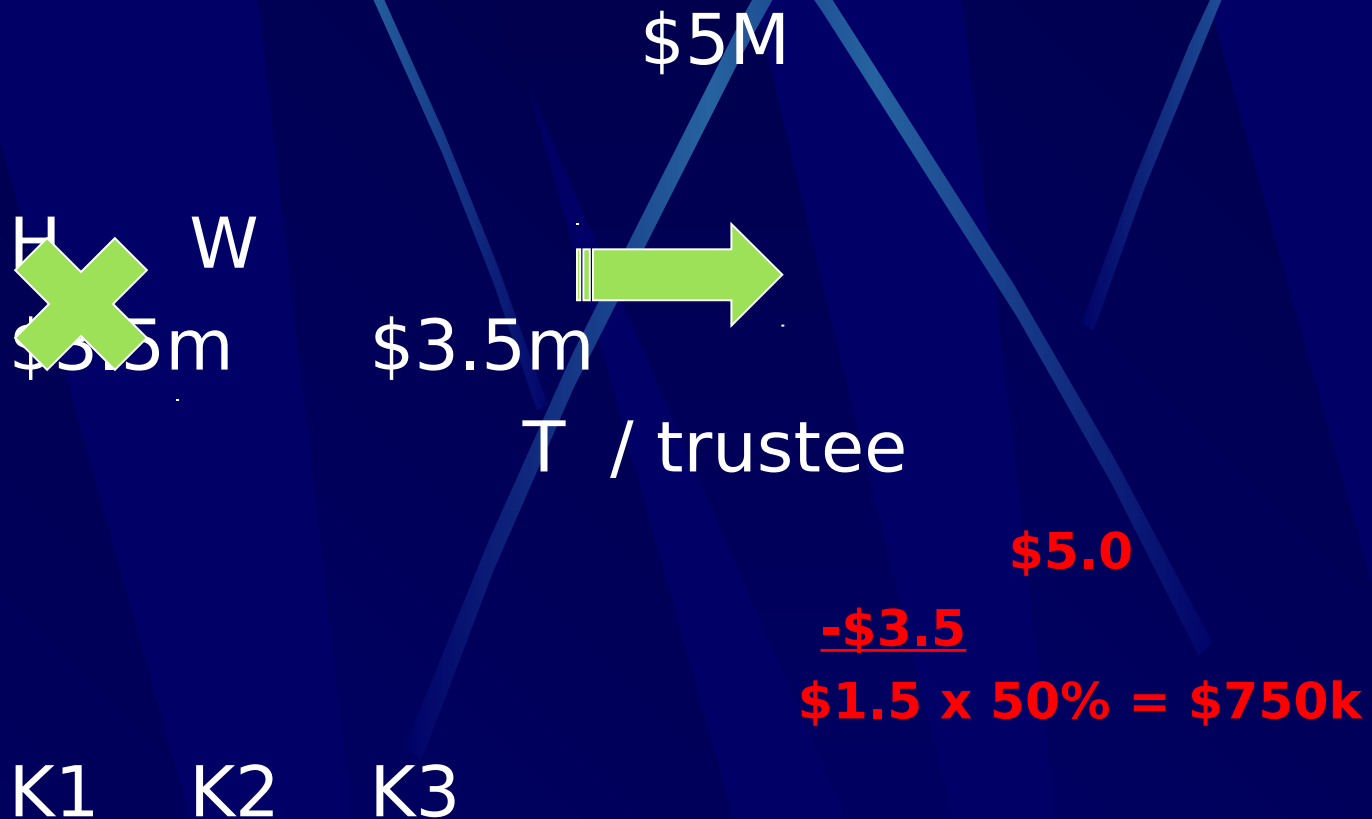
K3

On death of first spouse

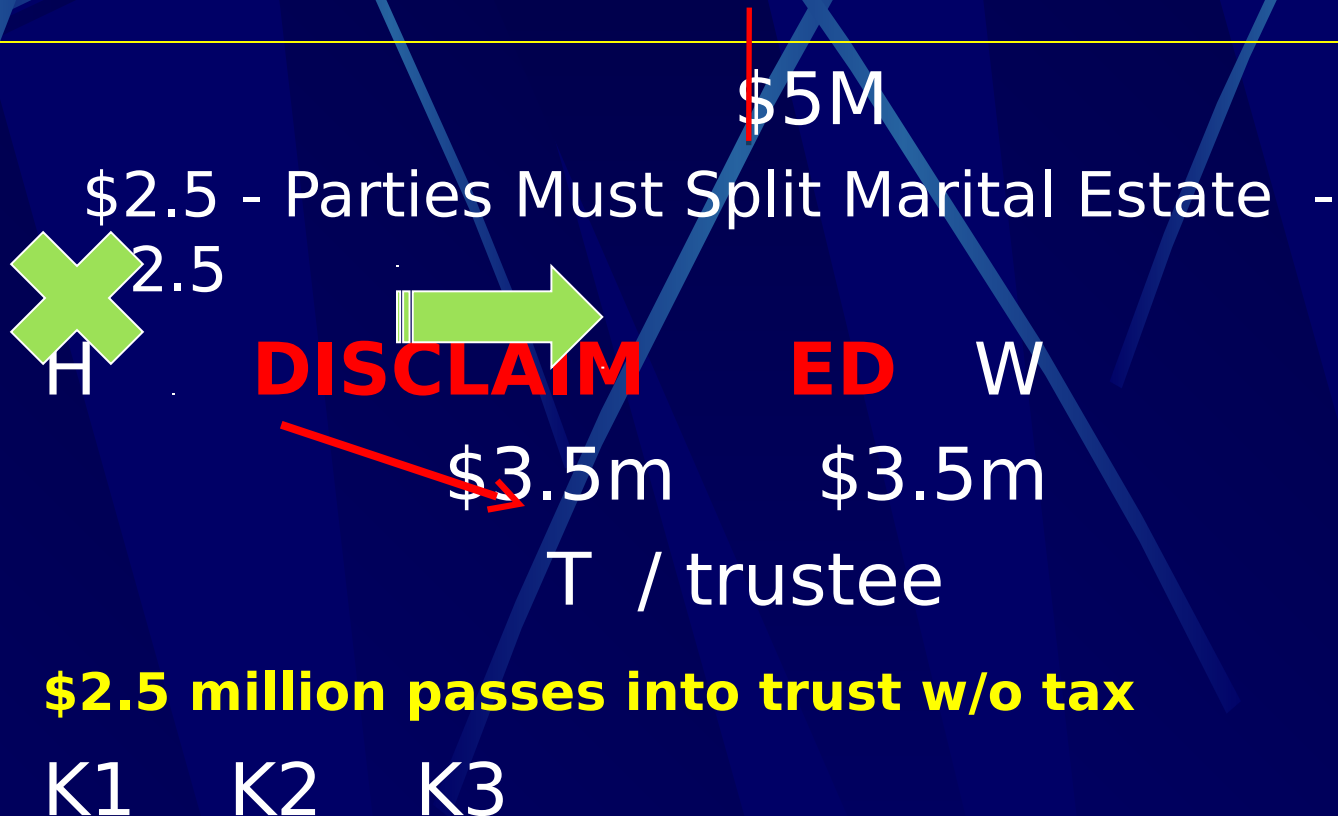


K1 K2 K3

Substantial tax burden



CST Solution



Credit Shelter Trusts

During her lifetime
spouse is supported
\$3.5m

\$2.5
W

\$2.5m / T / trustee

K1 K2 K3

Death of Surviving Spouse

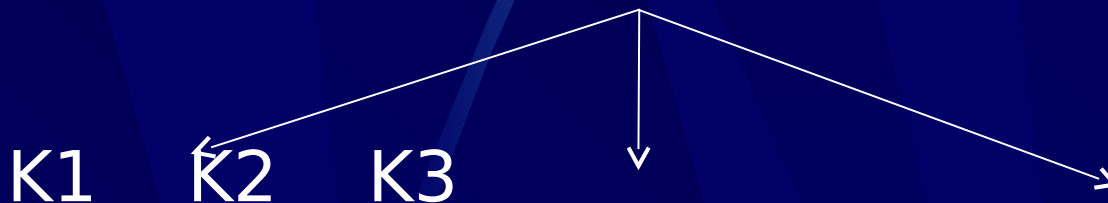
When spouse dies, trust
pays balance to kids

\$1.5m / T / trustee

\$2.5

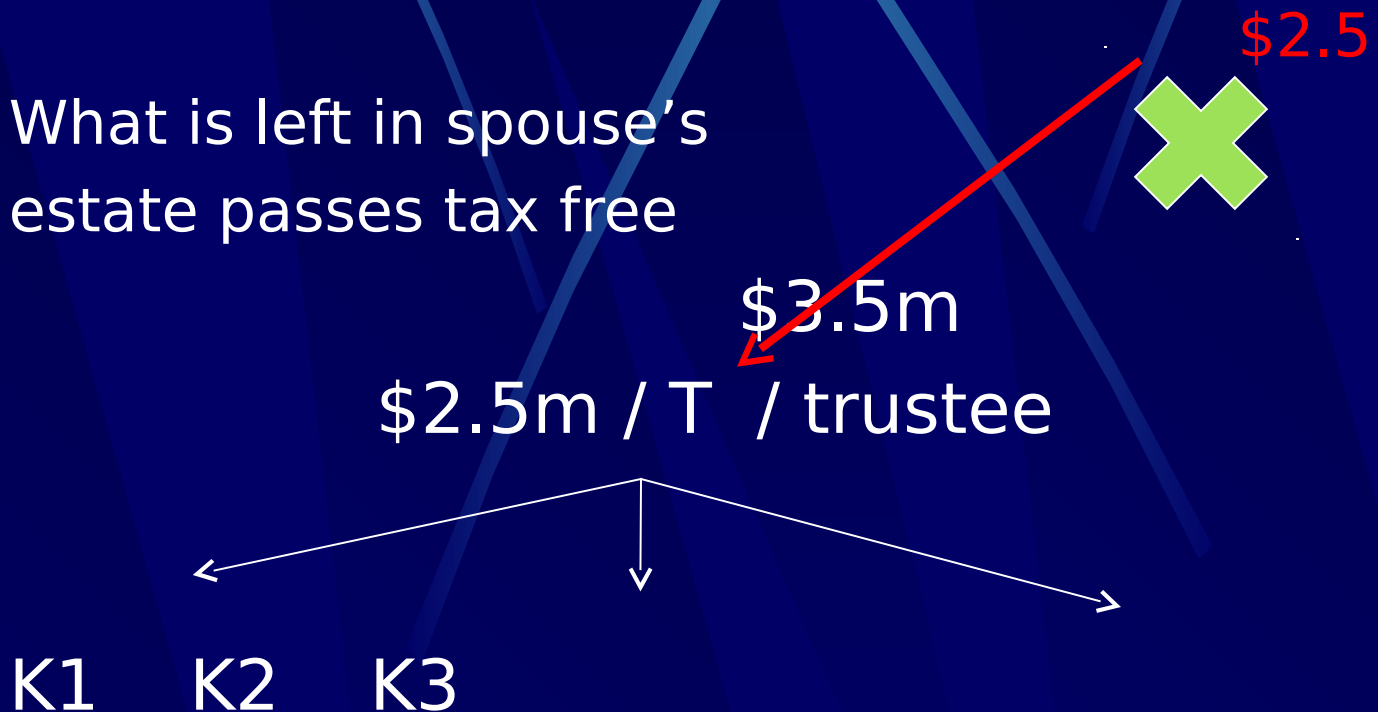


\$3.5m



Then...

What is left in spouse's estate passes tax free



Intestate?

- State law determines beneficiaries:
 - No will at death
 - Decedent had separate property
 - Life insurance without a properly named beneficiary

Intestate?

- In Virginia:
 - Surviving Spouse 100% unless:
 - Issue of decedent are not those of spouse, then 33% to spouse, 66% to kids
 - Otherwise:
 - Decedent's children
 - Father and mother or survivor
 - Brothers and sisters and their descendants
 - Etc.....

Probate

- Official proving and recording of a will as the authentic and valid last will and testament of the deceased.
- Generally, the process in which separately owned property is administered upon the death of the decedent.
- In Virginia, executor should be a state resident. Otherwise, a state resident must also co-qualify or be the resident agent.

Probate

- Fees vary. For estates over \$15,000, a probate tax will be collected by the Clerk based on a rate of 10 cents for every \$100 of value or fraction thereof.
- Average probate in Fairfax County is 18 months.
- For estates less than \$50k, special provisions apply that can shorten the process.

Automobiles

- DMV rules allow cars to be transferred without the need for probate.
- Generally, surviving spouses may re-title and register cars that were separately owned by paying fee of about \$50, and providing the death certificate, the old title and registration, and the VSA-24 form.
- See info paper for details on process.

Powers of Attorney

- A legal document authorizing another to act as your agent or attorney
- Different types
 - General
 - Special
 - Health care
- Duration
 - Indefinite, fixed expiration date, or specific transaction
 - Durable or non-durable

Advance Medical Directives

- Gives direction to doctors and family members in the event of a terminal condition
- Effective upon your inability to make health care decisions
- Directs the withholding or withdrawal of life-prolonging procedures and treatments
- May also direct that specific procedures and treatments be provided

Durable POA for Health Care

- Designates an agent to make health care decisions for you
- You may designate primary and alternate agents
- Effective only upon your mental or physical disability
- Agent's authority continues as long as you are incapacitated

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Uniformed Services Employment and Reemployment Rights Act

- USERRA provides job protection and rights of reinstatement to employees who participate in the NG and Reserve
- National Committee for Employer Support of the Guard and Reserve (ESGR) advocates USERRA policies, and provides assistance to service members
- Call ESGR at 1-800-336-4590

USERRA BASICS

- Prior Notice to employer
- Absence not to exceed five years
- Discharge under honorable conditions
- Report back in a timely manner

USERRA BASICS

- Notice to employer
 - Advance written or oral notification must be made to employers prior to going on duty, unless precluded by military necessity. We recommend that you notify your employer of any window of anticipated military service, in writing. You should also provide redacted orders.

USERRA BASICS

- Required Documentation
 - After periods of military leave of absence for more than 30 days, the employer has the right to request copies of orders, which can be used to establish the employee's basic eligibility for protection under USERRA.

USERRA BASICS

- Time Limits?

- Note that there is a 5 year limit on the duration of the period or periods of service with any single employer.
- Drills and AT does not count against the 5 year limit.

USERRA BASICS

- Release from Service
 - Must be under honorable conditions
 - Punitive discharges (resulting from courts martial) and adverse administrative discharges forfeit protections under USERRA

USERRA BASICS

- Returning to Work Promptly
 - Service less than 31 days – return next work day
 - Service 30-181 days – return within 14 days
 - Service more than 181 days – return to work within 90 days

USERRA BASICS

- Rights upon Return
 - Prompt reinstatement
 - Continuous Accumulation of Seniority
 - Reinstatement of Civilian Health Coverage
 - Protections from Discharge – except for cause
 - Accommodations for Disabled

Taxes

- A servicemember has at least 180 days from the date on which he or she returned from a combat zone or contingency operations in which to file income taxes.
- DoD-provided dependent care assistance is non-taxable.
- Ft Belvoir tax center can prepare and electronically file your taxes for free. CALL (703) 805 4378
- Refund anticipation loans: Yet another bad deal!